IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No. 536 of 2005

Date of Decision : 24.8.2006

Gurdas Ram

.... Petitioner

Versus

State of Punjab and others.

...Respondents

CORAM : HON'BLE MR. JUSTICE J.S.KHEHAR
HON'BLE MR. JUSTICE S.D.ANAND

Present : Mr. R.S. Bajaj, Advocate,
for the petitioner.

Mr. Ashok Aggarwal, Addl. A.G., Punjab,
for the respondents.

J.S.KHEHAR, J.(ORAL)

In the instant petition, the solitary prayer at the hands of the petitioner is for the issuance of a writ, order or direction in the nature of mandamus so as to direct the respondents to release the gratuity payable to him along with interest. Interest is being claimed on account of the fact that despite having retired on attaining the age of superannuation as far back as on 31.1.1999, his gratuity has been withheld.

It would be relevant to mention that the petitioner earlier approached this Court by filing Civil Writ Petition No.116 of 2000. The Lok Adalat attached to this Court disposed of the writ petition by passing the following orders:

"The petitioner retired from service on 31.01.1999. At the time of his retirement, he was working as Junior Assistant with N.J.S.A. Government College, Kapurthala – respondent No.4. His grievance is that till today, he has not been paid any of the retiral benefits. Written statement has been filed on behalf of respondent No.4, wherein preliminary objection No.2 has been taken to the effect that a sum of Rs.9,85,123/- is due from the petitioner as he is alleged to have committed embezzlement. It is further stated that the retiral dues payable to the petitioner besides pension are to the tune of Rs.4,60,321/- and in this manner, the amount recoverable from him on account of embezzlement remains deficient by Rs.5,24,802/-.

We have gone through the written statement. We find that at no stage during the period of service of the petitioner were any disciplinary proceedings taken against him for the alleged embezzlement. Even after his retirement despite expiry of period of one year and nine months, no proceedings have been taken against him.

It is however, a fact that a letter dated 2.6.1999 was addressed by the Principal of the College to the petitioner, to which he furnished reply Annexure P-5. On the other hand, the Principal of the College has placed on the record a report of enquiry got conducted by him. It is alleged that the petitioner was not participating in this enquiry. We are not satisfied with this averment. After the retirement of the petitioner, the proper course was to take proceedings in accordance with Rule 2.2.(b)

Punjab CSR Vol.II, holding an enquiry for any loss that has been caused to the Government on account of the conduct of the petitioner after affording him due opportunity in accordance with law.

In accordance with the settled principles of law as enunciated by the Full Bench in Ishar Singh's case pending the said enquiry, 100% provisional pension, commuted amount of pension, amount of unavailed of earned leave should be released to the petitioner. Similarly the amount of G.P.F. lying to the credit of the petitioner, which is in fact his property was required to be released on the date following his retirement. However, the amount of DCR gratuity can be withheld by the respondent till the enquiry is complete. Unfortunately, however, no proceedings in accordance with the above rules have been initiated so far.

The respondents shall, therefore, hold an enquiry into the allegations levelled against the petitioner on the basis of a fact finding report appended with the written statement of the Principal, afford the petitioner due opportunity in accordance with law, which should ultimately result in an appropriate order by the competent disciplinary authority. Till then the DCR gratuity payable to the petitioner shall be withheld by the respondents. However, provisional pension at 100% shall be released to him along with the commuted amount of pension, amount of endorsement unavailed of earned leave besides, of course, the amount of G.P.F. lying to his credit within a period of two months from today, failing which the respondents shall

be liable to pay interest on the above retiral dues @ 18% p.a. In case the petitioner is exonerated of the allegations of the embezzlement against him, he may approach this Court for grant of interest on the amount of G.P.F. and other retiral benefits from the date of his retirement till the date of actual payment.

The petitioner shall be required to furnish an undertaking with adequate surety to the effect that in case any amount is recoverable form him and it exceeds the amount of DCR gratuity withheld, he shall deposit that amount in the Government Treasury after getting orders from the Principal subject of course to his right of appeal and other remedies available to him. Any such order of the disciplinary authority shall be complied with by him within a period of one month from its receipt. All these conditions shall be embodied in the undertaking, which he is to furnish.

This order is a settlement and an award of this Court executable as a decree under section 21(1) of the Legal Services Authority Act, 1987.

The writ petition is disposed of accordingly. A copy of this order be given to both the parties within seven days free of costs."

On account of the fact that the petitioner still is not paid his gratuity, he filed the instant writ petition. On the last date of hearing i.e. on 22.8.2006, a Division Bench of this Court passed the following orders:-

"Learned counsel for the petitioner has invited our attention to the order dated 13.10.2000 passed by the Lok Adalat of this

court wherein the enquiry already held against the petitioner was described as a fact finding enquiry and liberty was granted to the respondents to initiate proceedings against the petitioner under Rule 2.2 (b) of the Punjab Civil Services Rules Volume II.

Learned counsel for the petitioner vehemently contends that the respondents did not take any action against the petitioner under Rule 2.2 of the Punjab Civil Services Rules inasmuch as that the petitioner was never issued any charge sheet nor any regular departmental enquiry was conducted against him. In order to ascertain the factual position, learned counsel for the respondents seeks a short adjournment.

In the interest of justice, adjourned to 24.8.2006.

Be shown in the Urgent list."

The solitary contention of the learned counsel for the petitioner is that a preliminary enquiry has been conducted against the petitioner, whereupon it has been contemplated to issue a formal charge-sheet to the petitioner. It is, therefore, the contention of the learned counsel for the respondents that only when the regular enquiry proposed to be conducted against the petitioner is to be concluded, the petitioner will be entitled to the payment of gratuity.

We have considered the contention of the learned counsel for the respondents. It is, however, not possible for us to accept the aforesaid submission, as at the present juncture it is not open to the respondents to initiate a departmental enquiry against the petitioner in connection with the allegations pertaining to the period while the petitioner was still in service.

In this behalf reference needs to be made to Rule 2.2.(b) of the Punjab Civil Services Rules, Volume II, which reads as under:

> "(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceedings, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon re-employment after retirement:
>
> Provided that -
>
> (1) Such departmental proceedings, if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, he deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;
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> (2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment--
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> (i) shall not be instituted save with the sanction of the Government.
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> (ii) shall not be in respect of any event which took place more than four years before such institution; and
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> (iii) shall be conducted by such authority and in such place as the

Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service.

(3) No such judicial proceedings, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution; and

The Public Service commission should be consulted before final orders are passed.

Explanation – For the purpose of this rule --

(a) a departmental proceedings shall be deemed to be instituted or the date on which the statement of charges is issued to the officer or pensioner, or if the officer has been placed under suspension from an earlier date, on such date; and

(b) a judicial proceeding shall be deemed to be instituted--

(i) in the case of a criminal proceeding, on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance, is made; and

(ii) in the case of a civil proceeding, on the date of presentation of the plaint in the Court.

Note-- As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant-General. The amount of the pension withheld under clause (b) should not ordinarily

exceed one-third of pension originally sanctioned, including any amount of pension to be withheld, regard should be had to the consideration whether the amount of the pension left to the pensioner in any case would be adequate for his maintenance."

A perusal of the aforesaid rule reveals that a departmental enquiry can be initiated against a retired government employee only in respect of an event which has taken place within a period of four years from the date of institution thereof. Since, the allegations referred to in the preliminary enquiry conducted against the petitioner pertain to events preceding the date of his retirement i.e. prior to 31.1.1999, we are of the view that the respondents are precluded from holding a departmental enquiry against the petitioner on the allegations under reference. Since it is no longer competent for the respondents to hold a departmental enquiry against the petitioner on the allegations referred to in the preliminary enquiry held against him, we are satisfied that the solitary reason for withholding the petitioner's gratuity is unsustainable and is misconceived.

For the reasons recorded above, the instant writ petition is allowed. The respondents are directed to release the amount of gratuity payable to the petitioner as expeditiously as possible. Since the respondents have retained the petitioner's gratuity without any justifiable cause and deprived the petitioner of the same, the petitioner shall be entitled to the interest thereon with effect from the date of his retirement till the date of payment at the rate of 10% per annum.

Mr. Ashok Aggarwal, Addl. A.G., Punjab, on instructions from Mr. Varinder Kumar, Lecturer in Commerce, Government College, Kapurthala states that this title deed retained by the respondents, on account

of pendency of the enquiry against the petitioner, shall be released to him within a period of four weeks from the date of receipt of a certified copy of this order.

Disposed of accordingly.

(J.S.Khehar)
Judge

24.8.2006 (S.D. Anand)
vkd Judge